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International Covenant on Civil and Political Rights

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Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2260/2013*, **

Communication submitted by:	Andrei Strizhak (not represented by counsel)
Alleged victim:	The author
State party:	Belarus
Date of communication:	28 November 2012 (initial submission)
Document references:	Decision taken pursuant to rule 97 of the Committee's rules of procedure, transmitted to the State party on 18 June 2013 (not issued in document form)
Date of adoption of Views:	1 November 2018
Subject matters:	Refusal of authorities to authorize a picket; freedom of expression
Procedural issue:	State party's failure to cooperate
Substantive issues:	Freedom of assembly; freedom of expression
Articles of the Covenant:	19 and 21, read in conjunction with 2 (3)
Article of the Optional Protocol:	2

1. The author of the communication is Andrei Strizhak, a national of Belarus born in 1986. He claims that the State party has violated his rights under articles 19 and 21, read in conjunction with article 2 (2) and (3), of the Covenant. The Optional Protocol entered into force for Belarus on 30 December 1992. The author is not represented by counsel.

The facts as submitted by the author

2.1 On 14 June 2012, the author submitted an application with the Rechytsa District Executive Committee, Gomel Region, requesting authorization to hold a peaceful assembly (picket) in the city centre on 3 July 2012, being Belarusian Independence Day. The purpose of the picket was to draw public attention to the situation of the independent labour union

* Adopted by the Committee at its 124th session (8 October–2 November 2018).

** The following members of the Committee participated in the examination of the communication: Tania Maria Abdo Rocholl, Yadh Ben Achour, Ilze Brands Kehris, Sarah Cleveland, Ahmed Amin Fathalla, Olivier de Frouville, Bamariam Koita, Marcia V.J. Kran, Duncan Laki Muhumuza, Photini Pazartzis, Mauro Politi, José Manuel Santos Pais, Margo Waterval and Andreas Zimmermann.

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movement in Belarus. The intended venue was in the city centre, on the open square in front of the city palace of culture on Sovetskaya Street.

2.2 The application included all the necessary information, as stipulated in the Public Events Act of 30 December 1997, namely the event's purpose, nature, venue, date, start time and finish time, the estimated number of participants, the measures taken to secure public order and safety and provide medical services during the event and the arrangements for cleaning the area following the event. As an organizer, the author undertook a written obligation to be present for the entire duration of the picket to ensure that it was held in conformity with the established procedure for the conduct of public events, to comply with the lawful demands of the law enforcement authorities, to wear the distinguishable insignia of an organizer of a public event, such as an armband or badge, and to pay the relevant service providers in charge of securing public order and safety, providing medical services and cleaning the area no later than 10 days after the event.

2.3 On 27 June 2012, the Rechytsa District Executive Committee declined to authorize the picket on the ground that the author's application did not fulfil the requirements of the Public Events Act and of the Rechytsa District Executive Committee's decision No. 802 of 10 April 2012 on the procedure for holding public events in Rechytsa District.

2.4 On 10 July 2012, the author appealed the Rechytsa District Executive Committee's decision of 27 June 2012 to Rechytsa District Court, Gomel Region. He argued that the said decision did not provide any explanation as to what specific requirements of the executive committee's decision No. 802 had not been fulfilled in his application. With reference to articles 23, 33 and 35 of the Constitution and articles 19 and 21 of the Covenant, the author claimed that the denial of authorization to hold the picket could not be considered as a permissible restriction on his right to peaceful assembly and the right to freedom of expression that was necessary in a democratic society in the interests of public order (*ordre public*) or the protection of the rights and freedoms of others.

2.5 On 3 August 2012, the author's appeal was dismissed by Rechytsa District Court. During the court hearing, a representative of the Rechytsa District Executive Committee explained the reasons for denying authorization to hold the picket in question, on the basis of which the Court determined that, pursuant to article 9, paragraph 2, of the Public Events Act, permanent areas for holding public events were designated by local authorities. The Rechytsa District Executive Committee's decision No. 802 designated an asphalt-paved area of ground within Pobeda Park, which is not located in the centre of Rechytsa, as a place for holding pickets, rallies and meetings. The place that was chosen by the author in his capacity as the organizer of the public event, an open square in front of the city palace of culture on Sovetskaya Street, was not an area designated for such purposes by the Rechytsa District Executive Committee. The Court also determined that, according to article 5 of the Public Events Act, an application requesting authorization to hold a public event should include information about, inter alia, measures to secure public order and safety and the provision of medical services during the event and the arrangements for cleaning the area following the event. Article 10, paragraph 7, of the Public Events Act allows local authorities to further regulate the procedure for holding public events, taking into account local conditions and the requirements of the act. The Rechytsa District Executive Committee's decision No. 802 established a list of service providers that were eligible to provide the above-mentioned services, with a requirement to submit copies of the contracts concluded with these service providers to the Executive Committee, along with the application requesting authorization to hold the event. The author did not submit copies of any such contracts to the Rechytsa District Executive Committee together with his application. The court determined that the Rechytsa District Executive Committee's denial of authorization to hold the picket on 3 July 2012 was lawful.

2.6 On 6 August 2012, the author filed a cassation appeal with Gomel Regional Court against the District Court's decision. He argued that the requirements of the by-law (the Rechytsa District Executive Committee's decision No. 802) to hold a public event in a specific area designated for that purpose by the local authorities and to conclude onerous contracts with specific service providers in advance were impermissible and contrary to articles 23, 33 and 35 of the Constitution and articles 19 and 21 of the Covenant.

2.7 On 27 September 2012, Gomel Regional Court upheld the District Court's decision, based on the same grounds and arguments. Under article 432 of the Civil Procedure Code, the ruling of the cassation court is final and becomes enforceable from the moment of its adoption.

2.8 The author did not file an application with the Prosecutor's Office and the higher courts under the supervisory review procedure, since he did not consider that it constituted an effective remedy. He adds that the decision to consider a request for supervisory review does not depend on the will of the person affected but is purely at the discretion of a limited number of high-level judicial officers, such as the Prosecutor General and the Chairperson of the Supreme Court. When such a review takes place, it is limited to issues of law and does not permit any review of facts and evidence. The author refers to the Committee's jurisprudence[1] in support of his argument that the supervisory review procedure against court decisions which have entered into force does not constitute a remedy that has to be exhausted for the purposes of article 5 (2) (b) of the Optional Protocol. He adds that domestic law does not provide for a right of individual petition to the Constitutional Court. The author submits, therefore, that he has exhausted all available and effective domestic remedies.

The complaint

3.1 The author claims to be a victim of a violation by Belarus of the right to freedom of expression and the right of peaceful assembly, under articles 19 and 21, read in conjunction with article 2 (2) and (3), of the Covenant, because it remains unclear for what legitimate aim these rights were restricted. He argues that the Rechytsa District Executive Committee has not explained why such restrictions were necessary for one of the legitimate aims provided for in articles 19 and 21 of the Covenant and adds that, in his view, it was not necessary for the local assembly to prohibit the holding of a peaceful assembly, in the interests of national security, public order, the protection of public health or the protection of the rights and freedoms of others.

3.2 The author also claims that Belarus is in violation of its obligations under article 2 (2) of the Covenant by failing to take the necessary measures to give effect to the right to freedom of assembly, since the provisions of the Public Events Act contain vague and ambiguous standards. For example, according to article 9 of the act, the heads of local authorities have a discretionary right to designate permanent areas for the holding of peaceful assemblies.

3.3 The author submits that the application of the Rechytsa District Executive Committee's decision No. 802 has led to a violation of his right of peaceful assembly and right to freedom of expression. He maintains that the requirements imposed by the local authorities to hold public events in designated areas only and to conclude contracts with service providers are unacceptable restrictions of the right of peaceful assembly and the right to freedom of expression, for the following reasons: (a) decision No. 802 designates only two areas for holding public events in Rechytsa (which has a population of around 70,000) without the participation of the government authorities, one designated exclusively for holding pickets, rallies and meetings, the other designated for marches and street processions; and (b) decision No. 802 imposes additional obligations on the organizers of public events to conclude onerous contracts with service providers for maintaining public order and safety and providing medical services during the event and cleaning the area following the event.

3.4 The author argues that, if he had complied with the requirement to hold the picket in the only area in Rechytsa that the local authorities had permanently designated for that purpose, the holding of the event would have been pointless, since it would have been virtually impossible to achieve the picket's declared aim of drawing public attention to the situation of the independent labour union movement at that location.

[1] *Schumilin v. Belarus* (CCPR/C/105/D/1784/2008), para. 8.3.

Lack of cooperation by the State party

4. In notes verbales dated 18 June 2013, 4 February 2014 and 16 April 2014, the Committee requested the State party to submit information and observations on the admissibility and merits of the present communication. The Committee notes that this information has not been received. The Committee regrets the State party's failure to provide any information with regard to the admissibility or the substance of the author's claims. It recalls that article 4 (2) of the Optional Protocol obliges States parties to examine in good faith all allegations brought against them and to make available to the Committee all information at their disposal. In the absence of a reply from the State party, due weight must be given to the author's allegations, to the extent that they are substantiated.[2]

Issues and proceedings before the Committee

Consideration of admissibility

5.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 93 of its rules of procedure, whether the communication is admissible under the Optional Protocol.

5.2 The Committee has ascertained, as required under article 5 (2) (a) of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

5.3 The Committee takes note of the author's assertion that all available and effective domestic remedies have been exhausted. The Committee also notes that the author did not file applications under the supervisory review procedure, since he did not consider it an effective remedy. In the absence of any objection by the State party in this connection, the Committee considers that the requirements of article 5 (2) (b) of the Optional Protocol have been met.

5.4 The Committee considers that the author has sufficiently substantiated his claims under articles 19 and 21, read in conjunction with article 2 (2) and (3), of the Covenant, for the purposes of admissibility. It therefore declares the communication admissible and proceeds with its consideration of the merits.

Consideration of the merits

6.1 The Committee has considered the present communication in the light of all the information made available to it by the parties, as required under article 5 (1) of the Optional Protocol.

6.2 From the material before the Committee, it transpires that the author's action was qualified by the courts as an application to hold a public event and was refused on the basis that the location chosen was not among those permitted by the city authorities and that the author had not submitted copies of contracts concluded with service providers from an established list.

6.3 The Committee notes the author's claim that his right to freedom of expression under article 19 (2), read in conjunction with article 2 (3), of the Covenant has been restricted arbitrarily. The Committee refers to its general comment No. 34 (2011) on the freedoms of opinion and expression, in which it is stated that freedom of opinion and freedom of expression are indispensable conditions for the full development of the person, and that such freedoms are essential for any society.[3] They constitute the foundation stone for every free and democratic society. The Committee recalls that article 19 (3) of the Covenant allows for restrictions on these rights only as provided by law and as necessary (a) for respect of the rights or reputations of others; and (b) for the protection of national security or of public order (*ordre public*), or of public health or morals. Any restriction on the exercise of such freedoms must conform to the strict tests of necessity and

[2] *Samathanan v. Sri Lanka* (CCPR/C/118/D/2412/2014), para. 4.2; *Diergaardt et al. v. Namibia* (CCPR/C/69/D/760/1997), para. 10.2.

[3] See para. 2.

proportionality. Restrictions must be applied only for those purposes for which they were prescribed and must be directly related to the specific need on which they are predicated.

6.4 The Committee notes that neither the State party nor the national courts have provided any explanation to justify the restrictions on the author's freedom of expression. The Committee considers that, in the circumstances of the case, the prohibitions imposed on the author, although based on domestic law, were not justified for the purposes of article 19 (3) of the Covenant and constitute a violation of article 19 (2), read in conjunction with article 2 (3), of the Covenant.

6.5 The Committee notes the author's claim that his right to freedom of assembly under article 21, read in conjunction with article 2 (3), of the Covenant was violated by the refusal of the municipal authorities to allow the picket to be held. In this context, the Committee recalls that the right of peaceful assembly, as guaranteed under article 21 of the Covenant, is a fundamental human right that is essential for the public expression of an individual's views and opinions and indispensable in a democratic society.[4] This right allows for the possibility of organizing and participating in a peaceful assembly, whether moving or stationary, in a public location. The organizers of an assembly generally have the right to choose a location within sight and sound of their target audience; no restriction to this right is permissible unless it is imposed in conformity with the law and is necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others. When a State party imposes restrictions with the aim of reconciling an individual's right of peaceful assembly and the aforementioned interests of general concern, it should be guided by the objective of facilitating the right, rather than seeking unnecessary or disproportionate limitations to it.[5] The State party is thus under an obligation to justify the limitation of the right protected by article 21 of the Covenant.[6]

6.6 The Committee notes, in the light of the information available on file, that the national authorities and the court have not provided any justification or explanation for the prohibition of the author's right to freedom of assembly.

6.7 The Committee recalls that it is for the State party to demonstrate that the restrictions on the author's rights under article 21 were necessary and proportionate. The Committee observes that limiting pickets to certain predetermined and isolated locations does not appear to meet the standards of necessity and proportionality under article 21 of the Covenant.

6.8 The Committee notes that it has dealt with similar cases in respect of the same laws and practices of the State party in a number of earlier communications.[7] In the absence of any explanation by the State party regarding the matters at stake, the Committee concludes that, in the present case, the State party has violated the author's rights under article 21, read in conjunction with article 2 (3), of the Covenant.

6.9 In the light of this conclusion, the Committee decides not to examine the author's claims under articles 19 and 21, read in conjunction with article 2 (2), of the Covenant.

7. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it disclose a violation of the author's rights under articles 19 (2) and 21, read in conjunction with article 2 (3), of the Covenant.

8. In accordance with article 2 (3) (a) of the Covenant, the State party is under an obligation to provide individuals whose Covenant rights have been violated with an effective remedy. This requires it to make full reparation to individuals whose Covenant rights have been violated. Accordingly, the State party is obligated to, inter alia, (a) take

[4] *Korol v. Belarus* (CCPR/C/117/D/2089/2011), para. 7.5.

[5] *Poplavny v. Belarus* (CCPR/C/115/D/2019/2010), para. 8.4.

[6] Ibid.

[7] *Koreshkov v. Belarus* (CCPR/C/121/D/2168/2012); *Poplavny and Sudalenko v. Belarus* (CCPR/C/118/D/2139/2012); *Korol v. Belarus* (CCPR/C/117/D/2089/2011); *Levinov v. Belarus* (CCPR/C/117/D/2082/2011), para. 8.3; and *Levinov v. Belarus* (CCPR/C/105/D/1867/2009, 1936, 1975, 1977–1981, 2010/2010), para. 10.3.

appropriate steps to provide the author with adequate compensation; and (b) take steps to prevent similar violations occurring in the future. In that connection, the Committee reiterates that the State party should revise its normative framework, consistent with its obligation under article 2 (2), with a view to ensuring that the rights under articles 19 (2) and 21 of the Covenant may be fully enjoyed in the State party.

9. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy when it has been determined that a violation has occurred, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the present Views and to have them widely disseminated in Belarusian and Russian.